IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18/03/2003

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THE HONOURABLE MR.JUSTICE V.KANAGARAJ

CRL.O.P.No.1090 OF 2003
and
Crl.M.P.No.421 of 2003

1. P.T.Gopalaraja
2. Anbu Kamaraj .... Petitioners

-Vs-

The Inspector of Police
District Crime Branch
Chengai East District
Kancheepuram District ..... Respondent

Petition to call for the records on the file of respondent in Crime No.56 of 2002 and quash the same.

For Petitioners : Mr.V.Raghavachari

For Respondent : Mr.O.Srinath
Government Advocate

:ORDER

This criminal original petition is filed by the accused No.1 and 2 in Crime No.56 of 2002, on the file of the District Crime Branch Police, Chenngai East District, praying to call for the records and quash the same as illegal, incompetent and without jurisdiction on grounds such as that the case registered against the petitioners under Sections 403, 406, 421, 441 and 447 IPC is baseless and mala fide on grounds such as that one Shafmaster Leather Company (India) Pvt., Ltd., was the tenant in the premises of the petitioner who failed to pay the rents resulting in filing R.C.O.P.No.12 of 2002 on ground of willful default in payment of rent; that the tenant came to be in possession under the petitioners' mother, on a monthly rent of Rs.1,58,695.00 and on her death on 28.10.2001, the petitioners succeeded to the property and the second petitioner filed an application for eviction to his portion in the Court of District Munsif, Alandur, which by its order of eviction dated 25.04.2002, granted one month time for the tenant to vacate and deliver vacant possession; that on filing E.P.No.13 of 2002, the delivery was also taken

through court. While so, only to harass the petitioners, the complaint has been lodged and the same has been registered in Crime No.56 of 2002 by the respondent Police and hence the above criminal original petition on the following grounds:

a. That there is no case made out for registration of a complaint as against the petitioners herein.

b. That none of the provision of IPC stand attracted warranting investigation or prosecution as against the petitioners.

c. That the tenant was unable to pay the rent and had withdrawn himself from the premises and the same had also been recorded in court proceedings. To initiate criminal proceedings in respect of matters concluded through civil Courts is not only contemptuous, but vexatious as well.

d. That the charges against the petitioners are groundless, and liable to be quashed.

2. At the time that the above petition came up for admission before this Court, the learned counsel for the petitioners besides laying emphasis on the grounds of the above criminal original petition, would also submit three judgments respectively reported as under:

(i)2002 (1) SCC 241 (S.W.Palanitkar and others Vs. state of Bihar and another)

(ii)2001(2) SCC 636 (G.Sagar Suri and another Vs. State of U.P. and others)

(iii) AIR 2002 SC 1531 (Rishi Anand and another Vs. Government of NCT of Delhi and others)

So far as the first judgment cited above is concerned, the Honourable Apex Court has held that;

" In Nagawwa v. Veeranna Shivalingappa Konjalgi (1976) 3 SCC 736, this Court dealing with the scope of inquiry under Section 202 has stated that it is extremely limited only to the ascertainment of the truth or falsehood of the allegations made in the complaint (a) on the materials placed by the complainant before the Court; (b) for the limited purpose of finding out whether a prima facie case for issue of process has been made out; (c) for deciding the question purely from the point of view of the complainant without at all adverting to any defence that the accused may have. It is also indicated by way of illustration in which cases an order of the Magistrate issuing process can be quashed on such case being "where the allegations made in the complaint or the statements of the witnesses recorded in support of the same taken at their face value make out absolutely no case against the accused or the complaint does not disclose the essential ingredients of an offence which is alleged against the accused"

Cautioning against issuing of process so that it should not be an instrument in the hands of the private complainant as vendetta and to harass the person needlessly.

.... Vindication of majesty of justice and maintenance of law and order in the society are the prime objects of criminal justice but it would not be the means to wreak personal vengence.

In the second Judgment cited above, the Honourable Apex Court has held that the jurisdiction of the High Court for quashing the criminal proceedings can be exercised cautiously to prevent abuse of process of Court ... Omnibus statement of misrepresentation and absence of details as to how the

complainant was duped would amount to abuse of process of Court.
In the third judgment cited above, the Honourable Apex Court has held wherein in a case registered against the accused for offence punishable under Section 406 IPC, on facts it was found that the accused was shown to have gone back to U.S.A after brief stay immediately after the marriage wherein the Apex Court concluded that the criminal proceedings against the accused is liable to be quashed, further holding that omission to give details about the alleged entrustment of movable properties and the dishonest intention of accused by themselves cannot be valid ground to quash the proceedings against the accused.
Citing the above judgments, the learned counsel appearing on behalf of the petitioner would pray to quash the proceedings registered by the respondent.
3. In consideration of the facts pleaded having regard to the materials placed on record and upon hearing the learned counsel for the petitioner, particularly bearing in mind the legal proposition held in the judgments cited supra, in the case in hand for quashing the proceedings of the case registered by the respondent against the petitioners for the commission of offences under Sections 403, 406, 421, 441 and 447 IPC, it would be found that on the death of their mother, the petitioners have become the owners of the premises in which the de facto complainant is the tenant; that the premises of the third accused as a rental premises belonging to the first and the second accused and it is a factory and the Office of the complainant is located therein with machinaries for manufacture of leather goods and raw materials as finished goods, the value of which is estimated about Rs.2.85 Crores and the value of the machineries alone is about Rs.1.97 Crores.
4. It further comes to be known that the complainant had received the lawyer's notice form the petitioners dated 14.07.2002 demanding rental arrears and it was suitably replied to the de facto complainant that there was no arrears of rent from the third accused to the first and the second accused and that the bank is a secured creditor in possession of the goods in the premises and that the accused would be liable for consequences; that while so, when the manager of the complainant bank went to the premise on 02.09.2002, he was given to understand that the delivery of 1290 square feet of the property was effected in favour of the accused No.2 as per the decree in RCOP.No.12 of 20 02 and EP.No.30 of 2002 by the Court of District Munsif, Alandur. Laying emphasis that the decree is only to the extent of 1290 square feet and the de facto complainant would allege in his complaint that the second accused has no business to lock the entire rented premises under the pretext of the execution proceedings which is an illegal act committed on the part of the accused.
More over, the complainant would further submit that the accused have filed the above RCOP and obtained the ex parte decree only against the third accused alone on suppression of information about the dealings and possession of the property by the complainant bank and therefore the complainant would plead that the second accused cannot take action against the de facto complainant, since he is one who is in actual possession of the property but no decree as against him; that the second accused has colluded with the third accused and therefore all the accused are liable for prosecution in the manner registered before the second respondent in the above proceedings.
5. In short, it comes to be known on records made available that the second petitioner under pretext that he has obtained an ex parte decree on an

RCOP filed only for a limited area of the entire premises which are in possession and enjoyment of the de facto complainant and executing the same has put the premises under lock and key thus preventing the de facto complainant from either moving the goods thus carrying on with his business wherein the machineries and the goods inside are worth Rs. One Crore and above and therefore the de facto complainant has lodged the complaint before the respondent based on which the respondent has registered the case under the relevant provision of law based on those facts and circumstances revealed in the complaint.

6. In the above circumstances, since the subject is seized by the respondent for investigation and decision on completion of the same, it is not up to this court to cause its interference particularly to quash the complaint, since the facts and circumstances and the proposition of law cited above do not in any manner suggest such interference to be made and the only decision that can be arrived at in the circumstances of the case is to dismiss the above criminal original petition at the admission stage itself and the same is dismissed accordingly.

In result, there is no merits in the above criminal original petition for admission and the same is dismissed as such. Consequently, crl.M.P.No.421 of 2003 is closed.

Index: Yes
Internet: Yes
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